

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF STATE  
BUREAU OF SECURITIES REGULATION  
CONCORD, NEW HAMPSHIRE**

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**STAFF PETITION FOR RELIEF  
IN THE MATTER OF:**

**AMERICAN EXPRESS FINANCIAL  
ADVISORS, INC.**

**RESPONDENT**

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**INV04-122**

**PRELIMINARY STATEMENT**

The allegations contained in this petition follow from an examination of New Hampshire branch offices of American Express Financial Advisors, Inc. (hereinafter referred to as "Respondent"). Following the examinations, several issues concerning the advisory and mutual fund sales practices were identified. In early 2004, the New Hampshire Bureau of Securities Regulation demanded production of certain documents, and during the course of the year examined those documents to determine if any provision of the N.H. Uniform Securities Act had been violated.

The Bureau alleges in this Petition for Relief that the Respondent, as an investment adviser and one having a fiduciary duty to act primarily for the benefit of its clients, breached its duty by failing to properly disclose to its clients in writing before advice was given the existence of material conflicts of interest which could reasonably be expected to impair the rendering of unbiased and objective investment advice. It is

alleged that the Respondent's financial advisor training methods, system of sales incentives, and field management increased pressure on its investment advisor agents to recommend proprietary American Express and specially selected mutual fund products over other higher rated, better performing mutual fund products available for investment purposes. In many cases investment advisor agents would recommend the purchase of these proprietary and specially selected mutual funds as part of the investment plan document paid for by the client. Proprietary and specially selected mutual fund products would then be sold to clients by the Respondent, generating additional fees and compensation.

The Bureau's examination of documents also revealed that the Respondent had failed to disclose to its advisory clients several other significant conflicts of interest occurring primarily during the years 1999 to 2003. Namely that the Respondent engaged in directed brokerage arrangements with several mutual fund companies, that there were numerous revenue sharing arrangements with mutual fund companies, and that the sales force for the New Hampshire branches of the Respondent were heavily incentivized to sell proprietary and specially selected mutual fund investment products over other products available for sale. In fact, up until 2002 the Respondent failed to disclose to its customers that its financial advisors were paid higher compensation for selling proprietary products versus nonproprietary products.

In the directed brokerage arrangements, mutual fund companies whose shares were sold by the Respondent, would direct extra brokerage commissions to the Respondent's broker-dealer in exchange for "shelf-space" for the mutual fund. The term shelf-space means that the Respondent placed the mutual fund on a list of "Preferred" or

“Select” funds for its agents to sell and/or give increased attention and marketing preference to that fund. In revenue sharing arrangements, the mutual fund company used a portion of its assets to pay the Respondent for additional incentive to sell their fund’s shares.

The Bureau of Securities Regulation alleges that the failure to disclose these arrangements and the sales practices of the Respondent operated as a fraud or deceit upon the customers of the Respondent in the rendering of investment recommendations and advice and in connection with the sale of proprietary and specially selected mutual fund products.

### **STATEMENT OF FACTS**

I. The Bureau of Securities Regulation, Department of State, State of New Hampshire (hereinafter referred to as “the Bureau”), hereby petitions the Director, and makes the following statements of fact:

1. The Respondent, is a broker-dealer and investment adviser firm with an address on record with the Bureau of 50606 AXP Financial Center, Minneapolis, Minnesota. The Respondent’s CRD number is 6363. The Respondent is engaged in the business of buying and selling securities for the accounts of others and rendering investment advice for compensation. The Respondent is a federally covered investment adviser that has noticed filed with the State of New Hampshire. The Respondent has been a licensed broker-dealer in New Hampshire since July 1<sup>st</sup>, 1986. The Respondent is a wholly owned subsidiary of American Express Financial Corporation (hereinafter “AEFC”), which is incorporated in the State of Delaware, and its principal executive offices are located at World Financial Center, 200 Vesey Street, New York, New York. AEFC is registered as an investment adviser under the Investment Advisers Act of 1940 and provides research, analysis, and investment management services for American Express mutual fund companies in exchange for a fee that is calculated as a percentage of assets under management. American Express Corporation (hereinafter “AEC”) is the parent company of AEFC and is incorporated in Delaware. Its principal executive offices are located at World Financial Center, 200 Vesey Street, New York, New York. The American Express funds consist of approximately 66 mutual funds marketed under the proprietary American Express trademark and are categorized as follows: Growth Funds, Blend Funds, Value Funds, Global/International Funds, Income/Tax Exempt Funds, Sector Funds, and Index Funds.

2. The Respondent's nationwide sales force consists of approximate 10,000 investment advisor agents. During the years 1999 through 2003 (hereinafter referred to as the "relevant time period"), the Respondent maintained approximately 30 branch offices in the State of New Hampshire. Branch offices were supervised by a Field Vice President who was in turn supervised by a Group Vice President. The Group Vice President was Larry Post (hereinafter referred to as "Post"). Post was responsible for all advisors in his market group including their selection and recruitment. Post was also responsible for compliance with securities regulations and to ensure effective operational performance and results within his market group consistent with corporate goals and objectives. The Field Vice President for the Bedford, New Hampshire branch was Robert Bonfiglio (hereinafter referred to as "Bonfiglio"). The New Hampshire branch offices were designated by the Respondent as part of Marketing Group 222. The Respondent categorized its advisors as either P1 or P2 advisors. P1 advisors are generally those who have either limited experience or are new to the investment advisory business. They are provided office space, administrative support, training, and compensation either in the form of salary, advisory fees, fees from the sale of securities, or a combination thereof. P2 advisors are those deemed by the Respondent as having met certain business development and proficiency requirements, and considered as "franchisees" under contract to the Respondent. P2 advisors operate from their own offices but are subject to field management oversight similar to that described above. In connection with the preparation of investment advisory plans and recommendations for the purchase of securities, the Respondent provided all the tools an advisor required to recommend American Express funds including software, "model" mutual fund portfolios, access to market analysis, Morningstar reports, and on-going training and education. "Model" mutual fund portfolios were those populated with predetermined investment products.
3. Central to the Respondent's marketing efforts in New Hampshire was the sale of investment advice given through the completion of a financial plan entitled American Express Financial Advisory Service (hereinafter referred to as the "investment plans"). In the year 2000, the investment plans were 65% of the Respondent's total advisory services and fees. During the relevant time period the Respondent sold approximately 5,000 of these investment plans to New Hampshire investors for a fee. Fees charged for an investment plan varied greatly depending on the circumstances of the customer and his needs. The minimum fee charged for an investment plan was \$300, but it could be as high as several thousand dollars. Ongoing investment advisory service was available for a fee with each plan, or the investor had the option of paying a one-time fee for the initial plan with no ongoing investment service. The investment plans could automatically renew annually for an annual fee, or the plan would cancel at the option of the investor. Each investor had the option of receiving a variety of financial advice services, which could include income tax planning, protection planning, retirement planning, and estate planning. The service options could be comprehensive or issue specific. The advisory service

provided was non-discretionary. The investment plans were marketed through the use of a lengthy disclosure document which described the goal of the investment plans and the process by which an advisor would compile the client's financial information and generate the investment plan. The Respondent marketed the investment plans as *"designed to assist individuals and/or business owners in identifying, analyzing, and reaching their financial objectives"* [Disclosure document, April 1, 2002-March 31, 2003 at pg 5]. In reality the American Express Investment Advisory Service was primarily a vehicle to promote and sell American Express and specially selected securities products, many with mediocre performance.

4. Central to the creation of the investment plans was the use of certain computer software that implemented a series of master model portfolios that varied depending on the risk tolerance of the investor. Portfolios were conservative, moderate, or aggressive. When the investment plan was generated for each customer, the duty of the advisor was to select from a variety of securities products the appropriate securities investment and allocation for each investor. If the advisor selected mutual funds as the appropriate investment vehicle, the advisor would then have the ability to populate the investment plan document with specific mutual fund products and recommend the percentage of allocation for each customer. It is at this critical juncture when the fiduciary relationship between the investor and the Respondent was subverted in favor of the profit-making motives of the Respondent and its parent companies. Faced with a choice of mutual fund products to recommend to the investor, upon information and belief, the advisor in a vast majority of the investment plans would invariably recommend specially selected mutual fund products pushed onto the customers by the Respondent's hierarchy. These products would be American Express mutual funds in the vast number of cases or other "Preferred" and "Select" fund partners which had a special revenue sharing relationship with the Respondent. These Select and Preferred fund families included AIM, Alliance Bernstein, American Century, Calvert, Colonial Funds (merged with Liberty Funds), Columbia Funds (merged with Liberty), Crabbe Huson (merged with Liberty), Credit Suisse, Davis, Dreyfus, Eaton Vance, Evergreen Investments, Federated, Fidelity, Franklin Templeton, Galaxy (merged with Liberty), Goldman Sachs, INVESCO (merged with AIM), Nuveen, Oppenheimer, Phoenix, PIMCO, Pioneer, Putnam, Salomon Brothers, Stein Roe (merged with Liberty), Strong, Van Kampen, and Wells Fargo. Consequently, the highest fund sales by advisors were in American Express mutual funds and certain specially selected mutual funds.
5. Although the Respondent made some disclosures to its customers regarding the Respondent's conflicts of interest, the disclosures were inadequate, obscure, and misleading, and failed to reveal the extensive and insidious nature of the conflicts of interest driving the sale of proprietary, and specially selected mutual fund products over non-proprietary products. Among the disclosures that were made was a statement that, *"[T]he specific investment, financial and insurance products recommended by your financial advisor in connection with the American Express Financial Advisory Service you purchase generally is limited to products and*

*services made available by American Express Financial Advisors or other subsidiaries of our parent company, American Express Financial Corporation”* [Disclosure document, April 1, 2002-March 31, 2003 at pg 14]. However, the Respondent fails to disclose to the investor that American Express products are predominately recommended, that PI advisors are only trained to sell American Express products, and that the advisors are pressured, and compensated to sell American Express products over nonproprietary products. It wasn’t until 2002 that the Respondent disclosed the higher compensation for proprietary sales. It wasn’t until 2004 when the Disclosure document revealed that the proprietary tools used by advisors to determine the financial plan “*may not have the same convenient methods for viewing products not manufacture by American Express Financial Advisors and its affiliates, although your financial advisor may manually select and add such products*”, and “[b]efore making a decision, you should review with your financial advisor a number of factors, including a product’s historical performance and the consistency of that performance over time...” [Disclosure document April 1, 2004-March 31, 2005 at pg 20]. In effect, the Respondent inappropriately shifted the burden of due diligence onto the investor. The Respondent also failed to disclose to the investor special payments made through secret revenue-sharing arrangements with Preferred and Select mutual fund companies in exchange for agreements by the Respondent to make their products more prominent through the Respondent’s national distribution network. Additionally, the Respondent failed to disclose to its customers that it had secret and illegal directed brokerage agreements with certain mutual fund companies which would direct brokerage transactions to the Respondent in exchange for priority in marketing and distribution. A disclosure regarding revenue sharing did not appear until August of 2003. Additionally, the Respondent failed to disclose to the investor that the performance of an advisor was measured against the degree of that advisor’s proprietary sales versus non-proprietary sales, and that advisors were immersed in a sales culture dominated by an emphasis on proprietary sales.

6. The job performance of Post was based on a system which determined bonus compensation which was higher for proprietary and Select products than for non-proprietary products. In 2003, the Respondent developed a “Scorecard” system for bonus to the GVPs including Post, which was tied to production. In the third and fourth quarter Post’s bonus compensation for proprietary and Select products were approximately three times the bonus rate for non-proprietary products. In 2003, Post earned over nine hundred thousand dollars in Scorecard and Leadership bonus, which was an amount over four times his salary for that year. In 2003, Post’s combined salary and bonus was over one million dollars. The Respondent’s leadership devised sales contests and bonus plans designed to promote the sale of proprietary products. Travel, expense reimbursements, and attendance by advisors at special events were awarded to top producers. As a result of this scheme and course of conduct, the Respondent’s primary loyalty and fiduciary responsibility to its advisory clients was breached in favor of the profit making motives of the

Respondent. E-mails obtained by the Bureau during this investigation identify the true motives of the Respondent.

7. (A.) The e-mails demonstrate that many of the Respondent's mutual fund recommendations were based on predetermined model portfolios. In an e-mail dated January 16<sup>th</sup>, 2004, an employee of the Respondent states that the use of the model portfolios was a great way to make investing made simple and more importantly to drive proprietary sales. [See Exhibit 1, e-mail dated January 16<sup>th</sup>, 2004]. In an e-mail dated December 3<sup>rd</sup>, 2003, from Post to Fidelity Investments, Post tries to change the mix of fund selections placed in Fidelity model portfolios in favor of American Express. [See Exhibit 2, e-mail from Post to Fidelity dated December 3<sup>rd</sup>, 2003].

(B.) The e-mails demonstrate a sales system that was tainted with the pressure placed on advisors to drive proprietary sales. In an e-mail dated August 25<sup>th</sup>, 2003, advisors were lauded for having a cumulative total of 98% proprietary sales, and told to look to proprietary sales first. Employees with 100% proprietary sales were, "[t]his week's ALL-STARs". E-mails dated July 11<sup>th</sup>, 2003, contained a message from FVP Bonfiglio to certain identified advisors congratulating them for their high percentage of proprietary sales and at the same time pressured them to do better by increasing the percent mix of proprietary versus nonproprietary sales. These e-mails required advisors who sold nonproprietary products to contact Bonfiglio with an explanation on why nonproprietary products were recommended over proprietary products. Copies of these e-mails were sent to GVP Post on a weekly basis. [See Exhibit 3, e-mails from Bonfiglio to Post with attached e-mails to FAs on July 11<sup>th</sup>, 2003]. An employee for the Respondent supervising New Hampshire advisors sent congratulatory e-mails providing advisors licensed in New Hampshire the reason to drive proprietary sales stating "*its how we make money, and from me-its how we afford to do fishbowls, Red Sox tickets and other fun stuff.*" [See Exhibit 3a]. An e-mail in November 2003 from Post asks to pressure a New Hampshire advisor to influence his proprietary mix. [See Exhibit 4, e-mail from Post on November 4<sup>th</sup>, 2003].

(C.) The e-mails demonstrate the additional non-cash compensation incentives that were placed before the advisors to add more fuel to the fire. In July 2000, advisors were invited to "drive" their client's portfolios with the American Express European Equities Fund and earn points toward driving a leased Mercedes Benz for one year. This sales contest was illegal under National Association of Securities Dealers rules since it was not based on total production of all products sold. [See Exhibit 5, e-mail from Diane Hellyar on July 19<sup>th</sup>, 2000]. Hellyar, an American Express Product Sales Associate, sent repeated e-mails to advisors congratulating them and ranking them for proprietary sales. In November of 2003, an e-mail to Post describes a high percentage of proprietary mutual fund sales as the basis for an employee deserving an increase in his yearly stock award. [See Exhibit 6, e-mail to Post on November 19<sup>th</sup>, 2003].

(D.) The e-mails reveal that P1 and P2s advisors were trained only on American Express funds. This strategy was meant to "*go deep*" in driving American Express mutual fund sales. [See Exhibit 7, e-mail dated August 26<sup>th</sup>, 2003, and outline of Post's presentation to GVP's at a meeting in San Antonio where he recommends "*no non-prop at any P1 meeting*"].

## STATEMENT OF LAW

II. The Bureau hereby petitions the Director and makes the following statements of law under the New Hampshire Revised Statutes Annotated, RSA 421-B, and regulations thereunder (hereinafter referred to as the Act):

1. Respondent and its advisors are persons within the meaning of RSA 421-B:2, XVI.
2. Respondent is a broker-dealer within the meaning of RSA 421-B:2, III.
3. Respondent is a federally covered investment adviser pursuant to RSA 421-B:7, I-b.
4. The above described mutual funds products are securities as defined by RSA 421-B:2.
5. Pursuant to RSA 421-B:3, it is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly: to employ any device, scheme, or artifice to defraud; to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; or to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading. Respondent violated this section by failing to disclose material conflicts of interest to the thousands of New Hampshire residents who purchased investment plans as well as the proprietary, Preferred, and Select securities products offered for sale by the Respondent. Specifically, the Respondent and its advisors failed to disclose that the Respondent received special revenue-sharing payments to promote proprietary, Preferred, and Select mutual fund products. The Respondent failed to disclose the directed brokerage agreements it had with its mutual fund partners. The Respondent also failed to disclose that its advisors were trained and pressured only to recommend American Express products, and that they were operating in a sales culture which measured their performance based on the sale of proprietary products over nonproprietary products. These acts, practices, and course of business comprised a device, scheme, or artifice to defraud New Hampshire investors.
6. Pursuant to RSA 421-B:4, I, it is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale whether through the issuance of analyses or reports or otherwise: (a) To employ any device, scheme, or artifice to defraud another person; or (b) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other

person. The Respondent violated this section based on the reasons described in paragraph 5 of this section.

7. Pursuant to RSA 421-B:4, V a person who is an investment adviser or investment adviser agent is a fiduciary and has a duty to act primarily for the benefit of the person's clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser and the clients and the circumstances of each case, an investment adviser or investment adviser agent shall not engage in unethical business practices which constitute violations of paragraph I, including the following:(a) Recommending to a client to whom investment supervisory, management, or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser agent.(h) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser agent, or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such services, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.(k) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser, investment adviser agent, or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including: (1) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients or such services.(t) Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contravention of section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940. The Respondent violated these sections based on the conduct stated in paragraph 5 of this section.
8. Pursuant to RSA 421-B:8, X, persons licensed under RSA 421-B to conduct securities business shall abide by the rules of the Securities and Exchange Commission, National Association of Securities Dealers ("NASD"), national and regional stock exchanges, and other self-regulating organizations that have jurisdiction over the licensee, which set forth standards of conduct in the securities industry. The Respondent is subject to this section for violating and failing to abide

by NASD Rule 2830 prohibiting directed brokerage, illegal sales promotions, and requiring a disclosure of all cash compensation received by the Respondent for each mutual fund transaction.

9. RSA 421-B:10, I(a) and (b)(2) allows the secretary of state to deny, suspend, or revoke any license or application if he finds that it is in the public interest and that the broker-dealer or investment adviser has willfully violated or failed to comply with any provision of RSA 421-B, or the Securities Act of 1933, the Securities Exchange Act of 1934, or any rule under any of such statutes. The Respondent is subject to this provision for violating and failing to abide by NASD rules as stated above.
10. RSA 421-B:10, I(a) and (b)(7) allows the secretary of state to deny, suspend, or revoke any license or application if he finds that it is in the public interest and that the broker-dealer or investment adviser has engaged in dishonest or unethical practices in the securities business. The Respondent is subject to this provision.
11. RSA 421-B:10, I(a) and (b)(14) allows the secretary of state to deny, suspend, or revoke any license or application of a broker-dealer or investment adviser if he finds that it is in the public interest and that there is other good cause shown. The Respondent is subject to this provision.
12. RSA 421-B:10, III, provides that the secretary of state may issue an order requiring the persons to whom any license has been granted to show cause why the license should not be revoked. The Respondent is subject to this provision.
13. RSA 421-B:10, VI provides that the secretary of state, may upon hearing, assess an administrative fine of not more than \$2,500 per violation, in lieu of or in addition to, an order to revoke or suspend any license or application. The Respondent is subject to an administrative fine under this section for each mutual fund transaction which was made without full and fair disclosure, and for each mutual fund recommendation which was made without full and fair disclosure.
14. Pursuant to RSA 421-B:23, whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule under this chapter, he shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. The Respondent is subject to this section.
15. Pursuant to RSA 421-B:26, III, any person who, either knowingly or negligently, violates any provisions of this chapter may, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation or denial of any registration or license, or an administrative fine not to exceed

\$2,500, or both. Each of the acts specified shall constitute a separate violation. The Respondent is subject to a suspension, revocation, or denial, and a fine.

16. Pursuant to RSA 421-B:26, III-a, every person who directly or indirectly controls a person liable under paragraph III, every principal executive officer, or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the acts or transactions constituting the violation either knowingly or negligently, may, upon hearing, and in addition to any other penalty provided by law, be subject to such suspension, revocation, or denial of any registration or license, or administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal penalties imposed pursuant to RSA 421-B:24 or civil liabilities imposed pursuant to RSA 421-B:25. The Respondent is subject to this section.
17. Pursuant to RSA 421-B:26,V, after notice and hearing, the Secretary of State may enter an order of rescission, restitution, or disgorgement directed to a person who has violated RSA 421-B. The Respondent is subject to this section.
18. Pursuant to RSA 421-B:26, VI, the secretary of state may order any person who violates RSA 421-B:3, and 421-B:4 upon hearing, and in addition to any other penalty provided for by law, to make a written offer to the purchaser of the security to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid for the security together with interest at the legal rate, less the amount of any income received by the purchaser on the security, or if the purchaser no longer owns the security, an offer to pay an amount in cash equal to consideration paid for the security together with interest at the legal rate, less the amount the purchaser received on disposition of the security and less the amount of any income received by the purchaser on the security.

### **RELIEF REQUESTED**

III. The Bureau makes the following requests for relief in the above-referenced matter as permitted under the Act.

1. Find as fact the allegations contained in section I.
2. Make conclusions of law as stated in section II relative to the allegations contained in section I.
3. Order the Respondent to cease and desist from further violations of the act.
4. Issue an order to show cause why the broker-dealer license and notice filing authority of the Respondent should not be denied, suspended or revoked, in

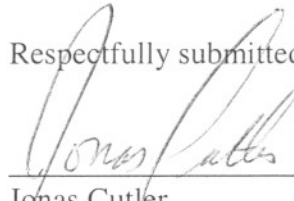
accordance with RSA 421-B:10, III and 421-B:10, I (a) and (b).

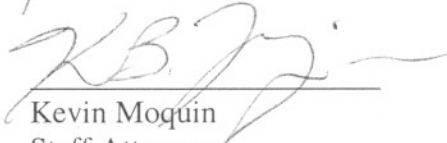
5. Find that it is in the public interest, and that the Respondent has willfully violated or failed to comply with the laws, and that there is good cause to suspend or revoke the broker-dealer license and notice filing authority of the Respondent in accordance with RSA 421-B:10, I (a) and (b).
6. Pursuant to RSA 421-B:10, VI, RSA 421-B:26, III, RSA 421-B:26, III-a and RSA 421-B:26, V, order the Respondent to pay an administrative fine and restitution of financial planning fees paid during the relevant time period and for violations of New Hampshire Uniform Securities Act occurring during the relevant time period, in an amount totaling up to \$17.5 million dollars. The proportion of fine and restitution to be determined by the Hearing Examiner following receipt of the consultant's findings and recommendations as described in paragraph 9 of this section.
7. Order the Respondent to pay the cost of the investigation in an amount up to \$200,000 dollars.
8. Pursuant to RSA 421-B:26, V, order the Respondent to pay disgorgement of all fees and commissions paid during the relevant time period to the Respondent in violation of the New Hampshire Uniform Securities Act related to revenue sharing and directed brokerage agreements. However, such payment will be offset by any amount paid to any other regulator for disgorgement of the New Hampshire portion of such fees and commissions paid.
9. Order the Respondent to retain at its own expense and with the approval of the Bureau, within 60 days from the date of Order, an Independent Assessment and Distribution Consultant to determine the amount of restitution to be paid by the Respondent for the investment plan fees paid by customers serviced by New Hampshire advisors during the relevant time period. The consultant shall make written findings and recommendations as to the amount of restitution to the Hearings Examiner as to the amount of restitution, within one hundred twenty (120) days from the date of retention. Also, within (120) days from the date of retention, the consultant shall make written recommendations as to a plan for distribution of restitution to New Hampshire customers. The consultant shall contemporaneously provide a copy of all written reports to the Bureau and the Respondent.
10. Take such other actions as necessary for the protection of New Hampshire investors and enforcement of the Act.

**RIGHT TO AMEND**

The Bureau's staff reserves the right to amend this Petition for Relief and requests that the Director of Securities Regulation take further enforcement action.

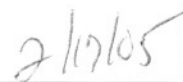
Respectfully submitted by:

  
\_\_\_\_\_  
Jonas Cutler  
Staff Attorney

  
\_\_\_\_\_  
Kevin Moquin  
Staff Attorney

  
\_\_\_\_\_  
Jeffrey Spill  
Deputy Director

  
\_\_\_\_\_  
Barry Glennon  
Deputy Director

  
\_\_\_\_\_  
Dated

[REDACTED]  
From: Larry M Post  
Sent: Monday, January 19, 2004 8:34 PM  
To: [REDACTED]  
Subject: Portfolio's

EXHIBIT 1

which mkt grp is this?...thanks

----- Forwarded by Larry M Post [REDACTED] -----

[REDACTED]  
01/16/2004 02:09 PM

To: [REDACTED]  
cc: [REDACTED] Larry M Post [REDACTED]  
Subject: Portfolio's

Joe,

I wanted you to know that I presented your Model Portfolios to the leadership team on Thursday and it went great. The time and effort you put into this is incredible. ~~Your program is a sure way to drive investing made simple and more importantly, to drive prop.~~

I am using Mornigstar workstation to track the portfolios to keep up with the portfolio returns. I would like to pick your brain for specific talking points, specifically handling advisor objections and why/if you change mutual funds from the portfolio.

Thanks again for sharing your portfolios.

John [REDACTED]

[REDACTED]

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From: Larry M Post  
Sent: Wednesday, December 03, 2003 9:50 AM  
To: [REDACTED]  
Subject: Re: FW: AMEX Blend Information

Hi Gary,

I was just looking this over and it looks like one of the aggressive portfolios has a 60% Fidelity mix. Any chance we can make these 50/50? Let me know your thoughts. Thanks

LP

[REDACTED]

11/13/2003 07:22 PM

To: Larry M Post/[REDACTED]  
CC:  
Subject: FW: AMEX Blend Information

Larry, I hope this note finds you well. Attached are some model portfolios we created to help promote AMEX funds in the brokerage platform. I'll give you a call next week to follow up regarding them. Separately, SPS continues to expand at a more rapid rate than brokerage, approaching 60% of our total business with AEFA.

[REDACTED]

Eastern Advisor Distribution Sales  
Fidelity Investments Institutional Services Company, Inc.  
500 Salem Street, OS3N  
Smithfield, RI 02917

[REDACTED]

Fidelity Investments Institutional Services Company, Inc. has a regulatory surveillance system that monitors and records incoming and outgoing e-mail communications, including attachments.

<<amexblend.ppt>> <<cohenfin2.xls>>



amexblend.ppt (57 KB)

- amexblend.ppt



cohenfin2.xls (29 KB)

- cohenfin2.xls

# American Express/Fidelity Advisor Conservative Portfolio

Performance Through 10/31/03

	1-Year	3-Year	5-Year	10-Year
AMEX/FA Conservative Portfolio	13.87%	4.10%	4.75%	8.25%
Conservative Index Blend	9.45%	3.51%	4.56%	6.87%

## Portfolio Composition

AMEX/FA Conservative Portfolio		Conservative Index Blend	
AXP Diversified Equity Income	10%	S&P 500	20%
AXP New Dimensions	10%	LB Aggregate Bond	30%
Fidelity Investment Grade Bond	30%	LB 1-3 Year Gov't	20%
AXP Short Duration US Government	20%	CSFB High Yield	10%
FA High Income Advantage	10%	6 Month CD	20%
6 Month CD	20%		

## Equity Style Breakout

	Value	Blend	Growth
Small Mid Large			
Portfolio %:	35.86	Portfolio %:	15.60
Index Blend %:	28.92	Index Blend %:	30.87
Portfolio %:	14.11	Portfolio %:	6.00
Index Blend %:	4.69	Index Blend %:	4.11
Portfolio %:	2.51	Portfolio %:	0.90
Index Blend %:	0.13	Index Blend %:	0.07
Portfolio %:		Portfolio %:	0.00
Index Blend %:		Index Blend %:	0.00

# American Express/Fidelity Advisor Moderate Portfolio

Performance Through 10/31/03

	1-Year	3-Year	5-Year	10-Year
AMEX/FA Moderate Portfolio	15.08%	-1.16%	4.53	N/A
Moderate Index Blend	17.48%	-1.20%	3.30	8.63

## Portfolio Composition

AMEX/FA Moderate Portfolio		Moderate Index Blend	
Fidelity Dividend Growth	25%	S&P 500	50%
AXP New Dimensions	25%	S&P Mid Cap 400	5%
Fidelity Advisor Mid Cap	5%	MSCI EAFE	5%
Fidelity Diversified International	5%	LB Aggregate Bond	15%
Fidelity Investment Grade Bond	15%	LB 1-3 Year Gov't	15%
AXP Short Duration US Government	15%	CSFB High Yield	10%
AXP High Yield	10%		

## Equity Style Breakout

	Value	Blend	Growth
Small Mid Large			
Portfolio %:	31.15	Portfolio %:	22.27
Index Blend %:	28.17	Index Blend %:	26.96
Portfolio %:	2.84	Portfolio %:	3.82
Index Blend %:	6.30	Index Blend %:	6.06
Portfolio %:	0.95	Portfolio %:	0.26
Index Blend %:	0.67	Index Blend %:	0.47
Portfolio %:		Portfolio %:	0.49
Index Blend %:		Index Blend %:	0.30

## American Express/Fidelity Advisor Aggressive Portfolio #1

Performance Through 10/31/03

	1-Year	3-Year	5-Year	10-Year
AMEX/FA Aggressive Portfolio #1	21.86%	-2.64%	6.41	N/A
Aggressive Index Blend #1	22.66%	-3.18%	3.55	9.45

### Portfolio Composition

AMEX/FA Aggressive Portfolio #1		Aggressive Index Blend #1	
Fidelity Dividend Growth	25%	S&P 500	50%
AXP New Dimensions	25%	S&P Mid Cap 400	20%
Fidelity Advisor Mid Cap	20%	MSCI EAFE	15%
Fidelity Diversified International	15%	LB Aggregate Bond	10%
Fidelity Investment Grade Bond	10%	CSFB High Yield	5%
AXP High Yield	5%		

### Equity Style Breakout

	Value	Blend	Growth
Small	Portfolio %: 27.18	Portfolio %: 17.97	Portfolio %: 29.52
Mid	Index Blend %: 25.84	Index Blend %: 20.84	Index Blend %: 20.78
Large	Portfolio %: 5.69	Portfolio %: 7.42	Portfolio %: 8.28
	Index Blend %: 9.00	Index Blend %: 9.71	Index Blend %: 10.37
	Portfolio %: 2.15	Portfolio %: 0.71	Portfolio %: 1.09
	Index Blend %: 1.62	Index Blend %: 1.20	Index Blend %: 0.83

## American Express/Fidelity Advisor Aggressive Portfolio #2

Performance Through 10/31/03

	1-Year	3-Year	5-Year	10-Year
AMEX/FA Aggressive Portfolio #2	23.25%	-2.04%	N/A	N/A
Aggressive Index Blend #2	25.18%	-3.07%	2.89	8.51

### Portfolio Composition

AMEX/FA Aggressive Portfolio #2		Aggressive Index Blend #2	
Fidelity Dividend Growth	25%	S&P 500	50%
AXP New Dimensions	25%	Russell 2000	20%
AXP Small Cap Advantage	20%	MSCI EAFE	15%
Fidelity Diversified International	15%	LB Aggregate Bond	10%
Fidelity Investment Grade Bond	10%	CSFB High Yield	5%
AXP High Yield	5%		

### Equity Style Breakout

	Value	Blend	Growth
Small	Portfolio %: 25.19	Portfolio %: 16.51	Portfolio %: 25.77
Mid	Index Blend %: 25.57	Index Blend %: 20.50	Index Blend %: 20.45
Large	Portfolio %: 3.58	Portfolio %: 2.88	Portfolio %: 3.55
	Index Blend %: 4.58	Index Blend %: 3.23	Index Blend %: 3.60
	Portfolio %: 5.82	Portfolio %: 8.95	Portfolio %: 7.75
	Index Blend %: 6.56	Index Blend %: 8.12	Index Blend %: 7.39

[REDACTED]

From: Robert A Bonfiglio [CN=Robert A Bonfiglio/OU=Field/OU=WH/O=AEFA] on behalf of Bonfiglio  
Sent: Friday, July 11, 2003 1:58 PM  
To: Larry M Post  
Subject: fw: Great Work!

FYI . . . Here are this week's emails.

Thanks,  
MaryEllen : )

----- Forwarded by Robert A Bonfiglio [REDACTED] -----

Robert A Bonfiglio  
07/11/2003 11:45 AM

To: [REDACTED]  
cc:  
Subject: Great Work!

Marc,

Great week!!

13,057 in GDC and almost all of it was in proprietary products!!! Terrific job!! Thank You!!

Bob

----- Forwarded by Robert A Bonfiglio/Field/WH/AEFA on 07/11/2003 05:00 PM -----

Robert A Bonfiglio  
07/11/2003 11:46 AM

To: [REDACTED]  
cc:  
Subject: Great Work!

Joan,

Great week!!

12,945 in GDC and almost all of it was in proprietary products!!! Terrific Job!! Thank You!!

Bob

----- Forwarded by Robert A Bonfiglio/Field/WH/AEFA on 07/11/2003 05:00 PM -----

Robert A Bonfiglio  
07/11/2003 11:48 AM

To: [REDACTED]  
cc:  
Subject: Great Work!

Jeff,

noticed that about 2,500 of it went to non-proprietary business. Can you share with me what the case(s) were?  
working hard to see if we can use Amex products to help you clients . . .

Good Job!!

Bob

----- Forwarded by Robert A Bonfiglio/Field/WH/AEFA on 07/11/2003 05:00 PM -----

Robert A Bonfiglio  
07/11/2003 04:57 PM

To: [REDACTED]  
cc:  
Subject: Great Work!

Judy,

Great week!!

8,024 in GDC and almost all of it was in proprietary products!!! Terrific job!! Thank You!!

Bob

Jeff,

Congrats on a great week!!

7,693 in GDC and almost all of it was in proprietary products!!! Thank You!!

Bob

----- Forwarded by Robert A Bonfiglio/Field/WH/AEFA on 07/07/2003 09:19 AM -----

Robert A Bonfiglio  
07/07/2003 09:15 AM

To: [REDACTED]  
cc:  
Subject: Great Work!

Karyn,

Congrats on a great Week!! 7,168 in TOS GDC!!

I noticed that about half of it went to non-proprietary business. Can you share with me what the case(s) were? We working hard to see if we can use Amex products to help you clients . . .

Good Job!!  
Bob

----- Forwarded by Robert A Bonfiglio/Field/WH/AEFA on 07/07/2003 09:19 AM -----

Robert A Bonfiglio  
07/07/2003 09:15 AM

To: [REDACTED]  
cc:  
Subject: Great Work!

Elizabeth,

Great week with 4 plans!! Good job!!

Bob

From:  
Sent:  
To:

Thursday, August 14, 2003 12:39 PM

EXHIBIT 3A

Subject:

Great job!

Hi everyone -

Congrats to the following advisors for achieving 90%+ Proprietary Investment Mix (and thanks from the com; we make money; and from me - its how we afford to do fishbowls, Red Sox tickets and other fun stuff):

100% Dirk, Sean, Phil, Chris  
99.8% Dave  
98.07% Shawn  
93.85% Dave  
90.08% Nancy

Congrats to the following for insurance results YTD:

Dave	18 Life contracts & 7 DI = 25 total contracts
Dave	23 contracts
Mike	19 contracts
Tom	17 contracts
Sean	14 contracts (7 DI - tied for most with Dave H)

We remain #1 in the MG for contracts per advisor - keep up the great work - you make a significant difference clients' lives.

HG

[REDACTED]

From: Larry M Post [CN=Larry M Post/OU=Field/OU=WH/O=AEFA] on behalf of Larry M Post  
Sent: Tuesday, November 04, 2003 10:32 AM  
To: [REDACTED]  
Subject: Prop mix and [REDACTED]

Hi Guys,

If you have a chance, will you please spend a little time with [REDACTED] and see if you can influence his prop mix on the PAC trip. Thanks

LP

PS. I've been working on him, it's a tough sell. See ya

[REDACTED]

[REDACTED]

From: Diane E Hellyar  
Sent: Wednesday, July 19, 2000 6:51 AM  
To: [REDACTED]  
Cc: [REDACTED]  
Subject: Getting in (Euro) Gear-Win a one-year lease on a Mercedes-Benz!

Memo from [REDACTED] RVP Investments:

GETTING IN (EURO) GEAR!

In conjunction with the launch of the new AXP European Equities Fund, you have an opportunity to drive a Merce for one year FREE....that's right, your own 2001 Mercedes-Benz C230 sedan!

The "Drive Your Client Portfolio with AXP European Equities Fund" promotion started June 26th and runs through 13th.

Ten (10) advisors with the highest point total will win a one-year lease from American Express Funds.

You earn three (3) points toward this award for every client who attends an international investing client s that I conduct and sign off on the client roster

One (1) point is earned for each official individual account review invitation that is sent to existing clients prospects through Progressive Impressions International (PII). Note: Check the PII website: [www.marketing.pii.orders.com](http://www.marketing.pii.orders.com) for mailing program particulars. You can review the invitati as the details of the promotion on Advisor Connect.

Start today! Rev up your activities and drive off in a Mercedes-Benz!

P.S. Your activities also earn points for your market groups. The top market group point-getter wins an all-expen: client investment forum featuring members of the American Express Investment Department and American Expr Funds.

If you have any questions on the "drive away promotion" please don't hesitate to call [REDACTED] in the Sales C Group at [REDACTED]

Thomas Cutler

From: [REDACTED]  
Sent: Wednesday, November 19, 2003 5:59 AM  
To: Larry M Post, [REDACTED]  
Subject: Year End Stuff



L Rating Form  
09-03 P1 FVPs ...

Here is my year end self evaluation. Overall this has been somewhat of a rebuilding year for Portsmouth and over the course of the past 12 months we have built up speed to transition well into the 2004 year. Over the past seven months Portsmouth has been in the top 10% of all P1 sites in the country and has also been top 10 in net gain, prop mutual fund percentage as well as overall prop mix. These are all great accomplishments considering where we were at in 2002.

As far as the L rating, I feel that I should be an L2 for the reasons mentioned in the attachment above. I do however want to make my case for my stock award for the year. Last year, I finished the year second on the scorecard w/in the market group, had a positive budget and wound up with 700 shares of stock. I thought the amount of stock given was a bit unfair seeing that the manager that was promoted from my office to an FVP position in another market group in November received more than double the amount of stock and another FVP from Virginia got 2500 shares of stock for finishing in the bottom 15% of all P1 FVP's. As you know, the 1800 share difference at today's share price is 1800 shares at \$44 = \$79,200. If you take that amount at 10% for the next 20 years it totals a whopping \$158,400!! What is even more frustrating is that the manager of the office ranked 115 was given as many shares of stock as I was!

Sorry, I think that you know by now that I am not a big complainer, but I truly feel that there must be inadequacies in the system for this to happen. I am asking you to consider this as you give your stock awards for the year. I have tough competition with [REDACTED] and [REDACTED] being in the market group, however keep in mind that I have been top 10% the last 7 months and anticipate finishing the year G1 with 70.5 points!! Thanks for your support and leadership over the past year and for keeping me focused on LOADING THE PIPE!!!

Regards

Tom

Kevin Moquin

EXHIBIT 7

7

From: Larry M Post  
Sent: Wednesday, September 03, 2003 3:33 PM  
To: [REDACTED]  
Subject: Re: GVP Conference presentation topics

Hi Jutta -

This is Erin, Larry's assistant. Attached is Larry's outline and presentation for San Antonio.



Outline and  
presentation.doc (...)

Thanks,  
Erin  
[REDACTED]

[REDACTED]  
08/26/2003 08:27 PM

To: Larry M Post/Field/WH/AEFA@AMEX  
cc:  
Subject: GVP Conference presentation topics

Larry, as discussed, here are the due dates:

outline by 9/5  
presentation by 9/19 at the latest.

Jutta

----- Forwarded by Jutta Peters on 08/26/2003 07:29 PM -----

From: [REDACTED]  
To: [REDACTED]  
cc: [REDACTED], Larry M Post/[REDACTED]  
Subject: GVP Conference presentation topics  
[REDACTED]

Here are my thoughts on the tactics on which I would "go deep" in my segment of the driving AXP mutual fund sale presentation:

- 1) Train only AXP funds with P1 (and P2) advisors
- 2) Speak publicly only at AXP-only events (i.e., where AXP is the featured product vendor) [and be sure to have a events at which to speak]
- 3) Sell Jim Cracchiolo's "world class asset management company" vision and provide periodic updates (on improv AXP fund performance, etc.) at GVP Lunch 'n' Learns (in both P1 and P2)

I estimate that my comments will only take 20 to 30 minutes (so I don't need the 40 allocated).

WKB

## Larry Post Outline & Presentation for San Antonio

### HOW TO MANAGE AXP & SELECT:

1. No Non-Prop at any P1 meeting.
2. Use AXP wholesalers as much as possible.
3. Act as a wholesaler.
4. Help fund AXP wholesaler events
5. Be a resource for advisors so they ask the market group first for support of marketing events.

---

6. Explain MGOS to select wholesalers:
  - a. They must know to use their product in the following order.
    - Insurance sub accounts – VUL and RAVA
    - WMS
    - SPSIn this order only!
  - b. No select fund in brokerage accounts.
7. Take pictures at golf events! It's free!
8. Send emails and cards. It's free!
9. Send gifts. It's cheap!
10. Think and act as the owners. No Visa or MasterCard.

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF STATE  
BUREAU OF SECURITIES REGULATION**

IN THE MATTER OF:

American Express  
Financial Advisors, Inc.

)  
) ORDER TO CEASE AND DESIST  
)  
) INV04-122  
)

**NOTICE OF ORDER**

This Order commences an adjudicative proceeding under the provisions of RSA 421-B:26-a.

**LEGAL AUTHORITY AND JURISDICTION**

Pursuant to RSA 421-B:23, the Secretary of State has the authority to issue and cause to be served an order requiring any person appearing to him to be engaged or about to be engaged in any act or practice constituting a violation of RSA 421-B or any rule or order thereunder, to cease and desist from violations of RSA 421-B.

**Pursuant to RSA 421-B:24, I, any person who willfully violates a cease and desist order issued pursuant to RSA 421-B:23 shall be guilty of a class B felony.**

Pursuant to Section 203A of the Investment Advisers Act of 1940, the Secretary of State has the authority to conduct investigations and bring enforcement actions with respect to fraud or deceit against an investment adviser or person associated with an investment adviser.

Pursuant to RSA 421-B:10, I(a) and RSA 421-B:10, I(b)(2), the Secretary of State has the authority to deny, suspend, or revoke any license or application if he finds that it is in the public interest and that the broker-dealer has willfully violated or failed to comply with any provisions of RSA 421-B, or the Securities Act of 1933, the Securities Exchange Act of 1934, or any rule under any of such statutes.

Pursuant to RSA 421-B:10, VI, 421-B:26,III and 421-B:26,III(a), the Secretary of State may, upon hearing and in lieu of, or in addition to any order to suspend or revoke any license, assess an administrative fine up to \$2,500.00 for each violation of the New Hampshire Securities Act.

Pursuant to RSA 421-B:26,VI, the Secretary of State may order any person who violates RSA 421-B:3, 421-B:4, and 421-B:23, upon hearing, and in addition to any other penalty provided for by law, to make a written offer to the purchaser to repurchase a security.

Pursuant to RSA 421-B:26, V, the Secretary of State may, in addition to any other penalty provided by RSA 421-B, upon notice and hearing, enter an order of rescission, restitution, or disgorgement directed to a person who has violated RSA 421-B.

### **NOTICE OF RIGHT TO REQUEST A HEARING**

The above named respondent has the right to request a hearing on this order to cease and desist, as well as the right to be represented by counsel. Any such request for a hearing shall be in writing, shall be signed by the respondent, or by the duly authorized agent of the above named respondent, and shall be delivered either by hand or certified mail, return receipt requested, to the Bureau of Securities Regulation, Department of State, 25 Capitol Street, Concord, New Hampshire 03301.

Under the provisions of RSA 421-B:23, I, if respondent fails to request a hearing relative to this order within 30 calendar days of receipt of this order, respondent shall be deemed in default, and this order shall, on the thirty-first day, become permanent.

Upon request for a hearing being received by the Bureau of Securities Regulation (hereinafter referred to as the "Bureau"), in the manner and form indicated above, a hearing shall be held not later than ten days after such request is received by the Bureau, after which

and within 20 days of the date of the hearing the secretary of state shall issue a further order vacating the cease and desist order or making it permanent as the facts require.

### **STATEMENT OF ALLEGATIONS**

The allegations contained in the Staff Petition for Relief dated February 17, 2005 (a copy of which is attached hereto) are incorporated by reference hereto.

### **ORDER**

**WHEREAS**, finding it necessary and appropriate and in the public interest, and for the protection of investors and consistent with the intent and purposes of the New Hampshire securities laws, and

**WHEREAS**, finding that the allegations contained in the Staff Petition, if proved true and correct, form the legal basis of the relief requested,

**THEREFORE**, it is hereby **ORDERED**, that:

1. The Respondent is hereby ordered to immediately cease and desist from further violations of RSA 421-B.
2. The Respondent shall show cause why its New Hampshire broker-dealer license and investment advisor notice filing authority should not be denied, suspended or revoked.
3. The Respondent shall at its own expense, and with the approval of the Bureau, retain an independent assessment and distribution consultant to determine the amount of restitution due those customers serviced by N.H. advisors during the relevant time period, and develop a plan for distribution of said restitution to customers. Production and delivery of the consultant's

report and plan for distribution shall be in accordance with the terms described in Section 9 the Bureau's petition.

4. The Respondent shall pay an administrative fine and restitution in an amount up to \$17,500,000, the proportion of which shall be determined following receipt of the aforementioned consultant's reports.
5. The Respondent shall disgorge itself of all fees and commissions received in connection with certain revenue sharing and directed brokerage agreements, with the total amount subject to an offset as described in the Staff Petition.
6. The Respondent shall pay the Bureau up to \$200,000 for all costs associated with its investigation.

Failure on the part of the Respondent to request a hearing within 30 days of the date of receipt of this Order shall result in a default judgment being rendered, including imposition of fines and penalties upon the defaulting Respondent.

SIGNED,

WILLIAM M. GARDNER  
SECRETARY OF STATE  
BY HIS DESIGNEE:

Date: 2/17/05



DAVID SCANLAN  
DEPUTY SECRETARY OF STATE